

Title 9-B: FINANCIAL INSTITUTIONS

Chapter 46: PROHIBITIONS

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Maine Revised Statutes
Title 9-B: FINANCIAL INSTITUTIONS
Chapter 46: PROHIBITIONS

§461. APPLICABILITY OF CHAPTER

The provisions of this chapter setting forth acts and practices that are prohibited apply to all financial institutions, universal banks, limited purpose banks, credit unions and financial institution holding companies subject to the laws of this State and are in addition to the prohibitions in this Title. [1999, c. 546, §1 (AMD) .]

SECTION HISTORY

1975, c. 500, §1 (NEW). 1999, c. 218, §24 (AMD). 1999, c. 546, §1 (AMD) .

§462. INTERLOCKS OF DIRECTORS, CORPORATORS AND OFFICERS

1. Prohibited interlocks. Except as provided in subsections 2 and 3, no person who is a director, corporator, officer or employee of a financial institution, credit union or financial institution holding company authorized to do business in this State shall serve as a director, corporator, officer or employee of any other such financial institution, credit union or financial institution holding company authorized to do business in this State.

[1975, c. 500, §1 (NEW) .]

2. Exceptions. The prohibitions contained in subsection 1 shall not apply to the situation where directors, officers or employees of subsidiaries of financial institutions and subsidiaries of financial institution holding companies who may also be directors, officers or employees of the parent financial institution holding company, or of other subsidiaries of such holding company.

[1975, c. 500, §1 (NEW) .]

3. Grandfather provision. The prohibitions contained in subsection 1 shall not apply to any person who is presently serving in such multiple offices until October 3, 1976.

[1975, c. 500, §1 (NEW) .]

4. Waiver. The superintendent may grant a waiver of the prohibition contained in subsection 1 upon request by an affected party. A waiver may be granted only in situations involving a financial institution, credit union or financial institution holding company and a limited purpose bank and for good cause shown when there is no conflict resulting from competition between institutions. The superintendent may withdraw a waiver granted under this subsection upon reasonable written notice to the affected party.

[1999, c. 546, §2 (NEW) .]

SECTION HISTORY

1975, c. 500, §1 (NEW). 1999, c. 546, §2 (AMD) .

§463. STOCK IN MAINE FINANCIAL INSTITUTIONS
(REPEALED)

SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 666, §22 (AMD). 1977, c. 152, §3 (AMD). 1979, c. 663, §42 (AMD). 1983, c. 55, §2 (RP).

§464. LOANS ON SHARES OF STOCK

1. Prohibition. A financial institution shall not make loans or discounts on the security of the shares of its own capital stock or the capital stock of its parent holding company or its subsidiaries, if any, nor shall an institution be the purchaser or holder of any such shares unless necessary to prevent loss upon a debt previously contracted for in good faith, and all stock so acquired shall be disposed of at public or private sale within one year after its acquisition, in accordance with such requirements as the superintendent deems appropriate.

[1975, c. 500, §1 (NEW) .]

2. Extension of time for disposition of shares. The time for disposition of shares acquired in subsection 1 may be extended by the superintendent for good cause shown, upon application in writing to the superintendent.

[1975, c. 500, §1 (NEW) .]

3. Purchase of own shares. Nothing in this section shall be construed as prohibiting an institution, with the prior written approval of the superintendent, from:

A. Redeeming shares of its capital stock of any type pursuant to provisions of its bylaws or articles of incorporation; [1977, c. 152, §4 (NEW).]

B. Purchasing shares of its capital stock of any type for the purpose of reducing its outstanding shares pursuant to provisions of its bylaws or articles of incorporation; or [1977, c. 152, §4 (NEW).]

C. Purchasing shares of any type of its own capital stock or the capital stock of its parent financial institution holding company pursuant to any stock option plan, stock bonus plan or other incentive plan for any or all directors, officers and employees duly adopted by the financial institution's board of directors. [1975, c. 546, §48 (AMD).]

[1977, c. 564, §48 (AMD) .]

SECTION HISTORY

1975, c. 500, §1 (NEW). 1977, c. 152, §4 (AMD). 1977, c. 564, §48 (AMD).

§465. LOANS TO DIRECTORS, CORPORATORS OR OFFICERS

(REPEALED)

SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 666, §23 (AMD). 1977, c. 152, §5 (AMD). 1981, c. 501, §§32,33 (AMD). 1981, c. 698, §24 (AMD). 1983, c. 56, §§1-3 (AMD). 1985, c. 83, §§2,3 (AMD). 1987, c. 405, §2 (AMD). 1991, c. 34, §9 (AMD). 1991, c. 681, §2 (RP).

§465-A. LOANS TO STOCKHOLDERS, DIRECTORS OR OFFICERS

1. Authorization. A financial institution authorized to do business in this State may make loans to its principal stockholders, policy-making officers or directors, or to any related interest of those persons, subject to the limitations contained in this section.

[1991, c. 681, §3 (NEW) .]

2. Terms and credit worthiness. A financial institution may not make a loan to any of its principal stockholders, policy-making officers or directors, or to any related interest of that person, unless the loan is made on substantially the same terms, including interest rates and collateral, as those generally available to the public, or to employees of the financial institution pursuant to a benefit or compensation program, and does not involve more than the normal risk of repayment or present other unfavorable features.

[1997, c. 22, §19 (AMD) .]

3. Prior approval. A financial institution may not grant a loan to any of its principal stockholders, policy-making officers or directors, or to any related interest of that person, in an amount that, when aggregated with the amount of all other loans to that person and all related interests of that person, exceeds the higher of \$25,000 or 5% of the financial institution's capital or unimpaired surplus, unless:

A. The loan has been approved in advance by a majority of the entire board of directors of the financial institution; and [1991, c. 681, §3 (NEW) .]

B. Any interested party has abstained from participating directly or indirectly in the voting. [1991, c. 681, §3 (NEW) .]

A financial institution may not make a loan to any one of its principal stockholders, policy-making officers or directors, or to any related interest of that person, in an amount that, when aggregated with the amount of all other loans to that person and all related interests of that person, exceeds \$500,000 except in compliance with the requirements of this subsection.

[1991, c. 681, §3 (NEW) .]

4. Participation in discussion. Participation by any principal stockholder, policy-making officer or director in the discussion or any attempt to influence the voting by the board of directors regarding a loan to the interested principal stockholder, policy-making officer or director, or any related interest of that person, constitutes indirect participation in the voting by the board of directors on the loan.

[1991, c. 681, §3 (NEW) .]

5. Lines of credit. Lines of credit to principal stockholders, policy-making officers or directors, or to any related interest of those persons, must be approved pursuant to the requirements of subsection 3. A loan granted under a line of credit approved pursuant to subsection 3 does not require prior approval pursuant to that subsection as long as the loan is granted within the term of the approved line of credit.

[1991, c. 681, §3 (NEW) .]

6. Liability for making. Every principal stockholder, officer, agent or employee of a financial institution who authorizes or assists in procuring or granting or who causes the granting of a loan in violation of this section or section 854, to the extent that the financial institution is subject to the provisions of section 439-A or 854, or who pays or willfully permits the payment of any funds of that institution on such a loan; every director of a financial institution who votes on a loan in violation of any of the provisions of this section; and every director, principal stockholder, officer, agent or employee who knowingly permits or

causes any of those actions to be done is personally responsible for payment of the loan and is guilty of a Class E crime. For purposes of this subsection, "agent" or "employee" does not include an individual who is incidentally involved in the preparation of documents or title work related to a loan.

[1997, c. 398, Pt. L, §7 (AMD) .]

7. Violations. A loan granted in violation of this section is due and payable immediately, without demand, whether or not it appears on its face to be a time loan. If the superintendent finds a loan outstanding in violation of this section or section 439-A or 854, the superintendent shall notify the president, clerk or treasurer of the financial institution to cause that loan to be paid immediately. If the loan is not paid within 30 days or such further time as the superintendent determines, the superintendent shall report the facts to the Attorney General, who shall commence a civil action in the name and for the benefit of the financial institution for the collection of the loan. The Attorney General may employ special counsel to prosecute the civil action. The financial institution shall pay all expenses of special counsel, to be recovered in a civil action in the name of the State.

[1991, c. 681, §3 (NEW) .]

8. Rulemaking. The superintendent may adopt rules to administer and carry out this section.

[1991, c. 681, §3 (NEW) .]

SECTION HISTORY

1991, c. 681, §3 (NEW). 1997, c. 22, §19 (AMD). 1997, c. 398, §17 (AMD).

§466. UNLAWFUL ACTS

The acts set forth in this section are unlawful and are criminal offenses unless otherwise provided.

[2003, c. 452, Pt. D, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF).]

1. Copying records of financial institutions. A director, corporator, officer, agent or employee of a financial institution who copies any of the books, papers, records or documents belonging to or in the custody of such institution, either for that person's own use or for the use of any other person other than in the ordinary and regular course of that person's duties, commits a Class E crime.

[2003, c. 452, Pt. D, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

2. Disclosures by service corporation employees. Any information derived from financial institution records or sources by personnel of a service corporation formed pursuant to section 445 may not be disclosed except in the regular course of business. A person who violates this subsection commits a Class E crime.

[2003, c. 452, Pt. D, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

3. Violation of orders. A person may not violate an order of the superintendent lawfully served upon that person.

[2003, c. 452, Pt. D, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

4. Unauthorized business. A person may not engage in the business of banking unless the person is properly authorized, nor may a person represent that that person is acting as a financial institution, nor use an artificial or corporate name that purports to be or suggests that the person is a financial institution unless the financial institution is properly authorized to do business in this State and except as provided in section 241, subsection 12.

[2001, c. 211, §15 (AMD) .]

5. Procuring loans. A director, corporator, officer, agent, employee or attorney of a financial institution may not stipulate for or receive or consent or agree to receive any fee, commission, gift or thing of value, from a person, firm or corporation for procuring or endeavoring to procure for the person, firm or corporation, or for any other person, firm or corporation, from any such financial institution, a loan or extension or renewal of loan or substitution of security, or the purchase or discount or acceptance of a paper, note, draft, check or bill of exchange by any such financial institution. This subsection may not be construed to refer to the expenses of examining titles, drafting conveyances and mortgages and the performance of other purely legal services.

[2003, c. 452, Pt. D, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

6. Concealment. A director, corporator, officer, agent or employee of a financial institution may not conceal or endeavor to conceal a transaction of the financial institution from a director, corporator, officer, agent or employee of the institution or an official or employee of the Bureau of Financial Institutions to whom it should be properly disclosed.

[2003, c. 452, Pt. D, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

7. Deception; false statements. A director, corporator, officer, agent or employee of a financial institution may not maintain or authorize the maintenance of an account of the financial institution in a manner that, to that person's knowledge, does not conform to the requirements prescribed by statutes applicable to the supervision of financial institutions or rules issued under those statutes; and that person may not, with intent to deceive, make a false or misleading statement or entry or omit a statement or entry that should be made in a book, account, report or statement of the institution or obstruct or endeavor to obstruct a lawful examination or investigation of the institution or any of its affairs by an official or employee of the Bureau of Financial Institutions.

[2003, c. 452, Pt. D, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

8. Violation of Title or rules. If, in the opinion of the superintendent, a financial institution or its officers or directors have persistently violated a provision of this Title, the superintendent shall immediately report the same with such remarks as the superintendent determines expedient to the Attorney General, who may immediately institute a prosecution on behalf of the State.

[2003, c. 452, Pt. D, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

9. False returns. A director, corporator, officer, agent or employee of a financial institution may not intentionally or knowingly make a false return to the superintendent in response to a call for information issued by the superintendent or by a deputy superintendent or upon the making or filing of a regular or special report required by this Title.

[2003, c. 452, Pt. D, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

10. Failure to make returns. A financial institution that fails to furnish reports and information to the superintendent, as required by this Title within the time specified, is subject to a penalty of not more than \$100 per day for each day it is in violation of this section, which penalty may be recovered in a civil action in the name of the State.

[2003, c. 452, Pt. D, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

11. General penalties. The follow penalties apply.

A. A person responsible for an act or omission expressly declared to be a criminal offense by statutes pertaining to the supervision of financial institutions and for which no other penalty has been provided by statute commits a Class E crime, except notwithstanding Title 17-A, section 1301, a fine of not more than \$5,000 may be imposed upon a natural person. [2003, c. 452, Pt. D, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF).]

A-1. A person who violates paragraph A with the intent to defraud commits a Class C crime. [2003, c. 452, Pt. D, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A director, corporator, officer, agent or employee of a financial institution is responsible for an act or omission of the institution declared to be a criminal offense against statutes pertaining to the supervision of financial institutions whenever, knowing that such act or omission is unlawful, the person participates in authorizing, executing, ratifying or concealing such act or in authorizing or ratifying such omission or, having a duty to take the required action, omits to do so. [2003, c. 452, Pt. D, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. D, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

12. Strict liability. Except as otherwise specifically provided, violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

[2003, c. 452, Pt. D, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY

1975, c. 500, §1 (NEW). 1975, c. 666, §§23-A (AMD). 2001, c. 44, §11 (AMD). 2001, c. 44, §14 (AFF). 2001, c. 211, §15 (AMD). 2003, c. 452, §D1 (AMD). 2003, c. 452, §X2 (AFF).

§467. OUTSIDE BUSINESS INTERESTS

1. Acting as broker-dealer prohibited.

[1997, c. 22, §20 (RP) .]

2. Other outside business interests. A policy-making officer of a financial institution may not engage in, directly or indirectly, any other business or occupation without the consent of a majority of the directors, evidenced by a duly recorded resolution.

[1991, c. 386, §16 (AMD) .]

3. Compliance. Any person described in subsections 1 or 2 who is in violation of this section on the effective date hereof shall have two years from said effective date to comply with the requirements of subsections 1 and 2.

[1975, c. 500, §1 (NEW) .]

4. Sale of annuities. A financial institution or a credit union authorized to do business in this State may not arrange for the sale of annuities pursuant to section 443, subsection 11 with an insurance agent if that agent is a director of the financial institution or credit union or with an agency if a director is an owner or otherwise has a financial interest in the agency.

[1993, c. 322, §2 (NEW) .]

5. Provision of names of persons purchasing annuities. A financial institution or a credit union authorized to do business and to sell annuities in this State may not sell or provide to any individual or institution the name of any person that has purchased annuities from that financial institution or credit union.

[1993, c. 322, §2 (NEW) .]

SECTION HISTORY

1975, c. 500, §1 (NEW). 1989, c. 502, §D6 (AMD). 1991, c. 386, §16 (AMD). 1993, c. 322, §2 (AMD). 1997, c. 22, §20 (AMD).

§468. RESTRICTIONS ON TRANSACTIONS WITH AFFILIATES

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Covered transaction" means, with respect to an affiliate of a financial institution:

- (1) A loan or extension of credit to the affiliate;
- (2) A purchase of or an investment in securities issued by the affiliate;
- (3) A purchase of assets, including assets subject to agreement to repurchase, from the affiliate unless exempted by rule or order of the superintendent;
- (4) The acceptance of securities issued by the affiliate as collateral security for a loan or extension of credit to any person; or
- (5) The issuance of a guarantee, acceptance or letter of credit, including an endorsement or standby letter of credit, on behalf of an affiliate. [1997, c. 398, Pt. I, §40 (NEW).]

B. "Transaction with an affiliate" means any transaction by a financial institution or its subsidiary with any person if any of the proceeds of the transaction are used for the benefit of, or transferred to, an affiliate. [1997, c. 398, Pt. I, §40 (NEW).]

C. "Affiliate" has the same meaning as given in section 131, subsection 1-A, except that a subsidiary of a financial institution is not an affiliate of that financial institution. [1997, c. 660, Pt. A, §6 (NEW) .]

[1997, c. 660, Pt. A, §6 (AMD) .]

2. Authorization. A financial institution and its subsidiaries may engage in a transaction with an affiliate subject to the following conditions:

A. The terms and circumstances, including credit standards, are substantially the same, or at least as favorable to the institution or its subsidiary, as those prevailing at the time for comparable transactions with or involving other nonaffiliated companies; or [1997, c. 398, Pt. I, §40 (NEW).]

B. In the absence of comparable transactions, the terms and circumstances, including credit standards, would in good faith be offered to, or would apply to, nonaffiliated companies. [1997, c. 398, Pt. I, §40 (NEW).]

[1997, c. 398, Pt. I, §40 (NEW) .]

3. Covered transactions. In addition to the requirements of subsection 2, a financial institution and its subsidiaries may engage in a covered transaction with an affiliate subject to the following limitations:

- A. In the case of an individual affiliate, the aggregate amount of covered transactions may not exceed 10% of the financial institution's total capital; [1997, c. 398, Pt. I, §40 (NEW).]
- B. In the case of all affiliates, the aggregate amount of covered transactions may not exceed 20% of the financial institution's total capital; [1997, c. 398, Pt. I, §40 (NEW).]
- C. A financial institution and its subsidiaries may not purchase a low-quality asset from an affiliate; [1997, c. 398, Pt. I, §40 (NEW).]
- D. Any covered transactions and any other transactions between a financial institution and its affiliates permitted by the superintendent pursuant to subsection 6 must be on terms and conditions that are consistent with safe and sound banking practices; and [1997, c. 398, Pt. I, §40 (NEW).]
- E. Each loan or extension of credit to, or guarantee, acceptance or letter of credit issued on behalf of, an affiliate by a financial institution or its subsidiary must be fully secured at the time of the transaction by eligible collateral. [1997, c. 398, Pt. I, §40 (NEW).]

[1997, c. 398, Pt. I, §40 (NEW) .]

4. Prohibited transactions. The following transactions are prohibited.

- A. A financial institution or its subsidiary may not purchase as fiduciary any securities or other assets from any affiliate unless this purchase is permitted under the instrument creating the fiduciary relationship, the purchase is pursuant to court order or the purchase is pursuant to law of the jurisdiction governing the fiduciary relationship. [1997, c. 398, Pt. I, §40 (NEW).]
- B. A financial institution or its subsidiary, whether acting as principal or fiduciary, may not knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security if a principal underwriter of that security is an affiliate of the financial institution, unless the purchase or acquisition of this security has been approved, before this security is initially offered for sale to the public, by a majority of the governing body of the financial institution who are not officers or employees of the financial institution or any affiliate of the financial institution. [1997, c. 398, Pt. I, §40 (NEW).]

[1997, c. 398, Pt. I, §40 (NEW) .]

5. Violations. Any transaction made in violation of this section is subject to the remedies prescribed in section 465-A.

[1997, c. 398, Pt. I, §40 (NEW) .]

6. Rulemaking. The superintendent may, by rule or order, define or further define terms used in this section and establish limits, requirements or exceptions to this section other than those specified in this section, if the superintendent determines such action is necessary for the protection of depositors or the public and is consistent with the purposes of this section. For institutions organized pursuant to Part 12, the superintendent may, by rule or order, define or further define the terms used in this section and establish limits, requirements or exceptions to this section other than those specified in this section, if the superintendent determines that such action is consistent with the powers and limitations accorded institutions organized pursuant to Part 12. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[1997, c. 660, Pt. A, §7 (AMD) .]

SECTION HISTORY

1997, c. 398, §I40 (NEW). 1997, c. 660, §§A6,7 (AMD).

§469. FUNDAMENTAL CHANGE IN ASSET COMPOSITION

1. Requirement of prior approval. A financial institution, without the prior written approval of the superintendent, may not change the composition of all or substantially all of its assets through sales or other dispositions of assets, through purchases or other acquisitions of assets or through other expansions of its operations.

[2005, c. 83, §11 (NEW) .]

2. Considerations. In determining whether to approve the change in the asset composition of a financial institution, the superintendent shall consider the purpose of the proposed transaction, its impact on the safety and soundness of the financial institution and any effect on the customers of the financial institution. If the superintendent concludes that a filing presents significant or novel policy, supervisory or legal issues, the superintendent may require an application to be filed in accordance with section 252.

[2005, c. 83, §11 (NEW) .]

3. Exception. Prior written approval is not required for a change in the composition of assets that is part of the financial institution's ordinary and ongoing core banking activities.

[2005, c. 83, §11 (NEW) .]

4. Rules. The superintendent may adopt rules defining a change in the composition of all or substantially all of a financial institution's assets and setting forth the factors to consider in determining what constitutes a fundamental change in assets. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 83, §11 (NEW) .]

SECTION HISTORY

2005, c. 83, §11 (NEW) .

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